

Application No. 10/715,243  
Letter of Response dated 06/09/2005  
Reply to Office Action of 06/06/2005

REMARKS

Applicants request withdrawal of the finality of the Final Rejection dated 06/06/2005, in the above-entitled application.

The Final Rejection is premature. It was made in the second action although that action included a new ground of rejection neither necessitated by applicants' amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Specifically, claims 1, and 6-13, were originally rejected as being unpatentable under 35 USC 103(a) over Underwood et al. in view of Kenzie.

Claims 1, and 6-13, have now been rejected on a new ground as being unpatentable under 35 USC 103(a) over Underwood et al. in view of Kenzie and Tillman.

Claims 1, and 6-13, have never been amended.

MPEP 706.07(a) clearly states that a second action on the merits in any application will not be made final where the examiner introduces a new ground of rejection neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

The reason for this is to leave no doubt among Examiners that they must state clearly and specifically any objections (the prime facie case) to patentability, and give the

applicant fair opportunity to meet those objections with evidence and argument. In re Oetiker, 24 USPQ 2d 1443, 1447 (Fed. Cir. 1992) (Plager, J., concurring).

For the foregoing reasons, it is submitted that the Final Rejection is premature, and withdrawal of the finality of the rejection is respectfully requested.

Respectfully submitted,

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